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5

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
8

9 Case No. SACV11-01309-DOC(ANx)

10 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. DBA
11 GLIDEWELL LABORATORIES, a
California corporation,

12 Plaintiff

13 vs.

14 KEATING DENTAL ARTS, INC., a
15 California corporation,

16 Defendant.
17

**PLAINTIFF'S/COUNTER-
DEFENDANT GLIDEWELL
LABORATORIES ANSWER TO
COUNTERCLAIMS OF
DEFENDANT/COUNTER-
PLAINTIFF KEATING**

18 KEATING DENTAL ARTS, INC., a
19 California corporation,

20 Counter-Plaintiff,

21 vs.

22 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC., DBA
23 GLIDEWELL LABORATORIES, a
California corporation, and
DOES 1 THROUGH 5, inclusive,

24 Counter-Defendants.
25

26
27 Plaintiff/Counter-Defendant Glidewell Laboratories hereby answers the
28 counterclaims as follows:

GENERAL ALLEGATIONS

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2
3 1. Plaintiff admits the allegations of paragraph 35 of Defendant's
4 counterclaims.

5
6 2. Plaintiff admits the allegations of paragraph 36 of Defendant's
7 counterclaims.

8
9 3. Plaintiff admits the allegations of paragraph 37 of Defendant's
10 counterclaims.

11
12 4. Plaintiff admits the allegations of paragraph 38 of Defendant's
13 counterclaims.

14
15 5. Plaintiff admits the allegations of paragraph 39 of Defendant's
16 counterclaims.

17
18 6. Plaintiff admits the allegations of paragraph 40 of Defendant's
19 counterclaims.

20
21 7. Plaintiff lacks knowledge or information sufficient to form a
22 belief about the truth of the allegations of paragraph 41 in regard to KDA's
23 business methods, advertising, customers and motivations and therefore denies
24 such allegations.

25
26 8. Plaintiff admits the allegations of paragraph 42 of Defendant's
27 counterclaims.
28

1 9. Plaintiff denies the allegation that “BRUX” is a generic dental
2 term for zirconia crowns. Otherwise Plaintiff admits the allegations of
3 paragraph 43 of Defendant’s counterclaims.
4

5 10. Plaintiff denies the allegation in paragraph 44 that it sued Keating
6 because Keating instead elected to continue using BRUX on the basis that
7 BRUX is a generic term and cannot be exclusively appropriated by any
8 competitor in the dental industry. Otherwise, Plaintiff admits the allegations
9 of paragraph 44 of Defendant’s counterclaims.
10

11 11. Plaintiff admits the allegations of paragraph 45 of Defendant’s
12 counterclaims.
13

14 12. Plaintiff lacks knowledge or information sufficient to form a
15 belief about the truth of the allegations of paragraph 46 of Defendant’s
16 counterclaims and therefore denies same.
17

18 13. Plaintiff denies that BRUXER is used to described and/or refer to
19 treatments for bruxism. Otherwise, Plaintiff admits the allegations of
20 paragraph 47 of Defendant’s counterclaims.
21

22 14. Plaintiff denies that there is a direct and descriptive connection
23 between the words BRUXER, BRUX and BRUXING and similar “bruxism” –
24 based words and dental crowns and other restorations. Plaintiff admits that
25 others have registered trademarks using the word BRUX but denies that
26 except for Plaintiff and Defendant, any have registered trademarks using the
27 word BRUX for dental crowns or other restorations. Otherwise Plaintiff
28

1 admits the allegations of paragraph 48 of Defendant's counterclaims.

2
3 15. Plaintiff denies the allegations of paragraph 49 of Defendant's
4 counterclaims.

5
6 16. Plaintiff denies that the table presented in Defendant's
7 counterclaims shows that any other companies have used BRUX in any
8 trademark for crowns or other restorations as alleged in paragraph 50 of
9 Defendant's counterclaims. Plaintiff admits that it began marketing under the
10 trademark BRUXZIR in June 2009.

11
12 17. Plaintiff denies the allegations of paragraph 51 of Defendant's
13 counterclaims. Plaintiff specifically denies that it is attempting to appropriate
14 the term BRUX to the exclusion of other competitors or to encompass all use
15 of a generic term.

16
17 18. Plaintiff is currently without sufficient knowledge or information
18 to form a belief as to the truth of the allegations of paragraph 52 of
19 Defendant's counterclaims.

20
21 19. Plaintiff denies the allegations of paragraph 53 that Defendant's
22 trademark has a "main trademark". Plaintiff lacks sufficient knowledge or
23 information to form a belief as to the truth of the remaining allegations of
24 paragraph 53 of Defendant's counterclaims.

1 27. Plaintiff denies the allegations of paragraph 61 of Defendant's
2 counterclaims.

3
4 28. Plaintiff denies the allegations of paragraph 62 of Defendant's
5 counterclaims.

6
7 THIRD COUNTERCLAIM
8

9 29. Plaintiff incorporates by reference its answers to the general
10 allegations and first and second counterclaim allegations of Defendant's
11 counterclaims.

12
13 30. Plaintiff denies the allegations of paragraph 64 of Defendant's
14 counterclaims.

15
16 31. Plaintiff denies the allegations of paragraph 65 of Defendant's
17 counterclaims.

18
19 32. Plaintiff denies the allegations of paragraph 66 of Defendant's
20 counterclaims.

21
22 33. Plaintiff denies the allegations of paragraph 67 of Defendant's
23 counterclaims.

24
25 34. Plaintiff denies the allegations of paragraph 68 of Defendant's
26 counterclaims.

1 35. Plaintiff denies the allegations of paragraph 69 of Defendant's
2 counterclaims.

3
4 AFFIRMATIVE DEFENSES

5
6 36. Plaintiff's BRUXZIR[®] trademark is a very strong mark widely
7 recognized in the dental industry. Plaintiff has sold over \$70 million dollars in
8 BRUXZIR[®] dental restoration products over the past three (3) years.
9 Therefore, the scope of Plaintiff's mark should be broadly construed.

10
11 37. The allegation that Plaintiff is, by enforcement of its trademark,
12 attempting to monopolize the zirconia crown industry is manifestly
13 nonsensical. There are virtually unlimited words and word combinations that
14 could be selected by Plaintiff's competitors as non-infringing trademarks for
15 such products and many have. Plaintiff is entitled to enforce its trademark
16 rights against those competitors who attempt to blatantly encroach on the
17 goodwill in the BRUXZIR[®] mark and ride on the coattails of Plaintiff's
18 success.

19
20 38. As used in Plaintiff's trademark BRUXZIR[®], the term BRUX is
21 merely suggestive of durability, hardness and toughness, it is neither generic
22 nor descriptive. As used in Defendant's trademark KDZ BRUXER, the term
23 BRUXER, even when improperly considered separately from the mark taken
24 as a whole, is not generic for dental restorations. It is a term used by
25 Defendant in its mark specifically to engender public confusion with
26 Plaintiff's mark in regard to zirconia dental restorations.

39. Defendant's trademark infringement is motivated by more than a mere attempt to intentionally trespass on Plaintiff's goodwill in its strong BRUXZIR® mark. Defendant's founder is a disgruntled ex-employee of Plaintiff and holds a grudge against Plaintiff for his prior termination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

1. Deny that Defendant's counterclaims have any merit and rule in favor of Plaintiff as to each of such counterclaims.

2. Deny Defendant any form of damages, costs, attorney's fees, or injunctive remedies in regard to its counterclaims.

3. Award Plaintiff its costs and attorney's fees for defending against Defendant's counterclaims.

4. Award Plaintiff such further relief as the Court may determine is just and proper.

DATED: March 15, 2012

By: /s/ Leonard Tachner
Leonard Tachner
Attorney for Plaintiff/Counter-
Defendant Glidewell Laboratories

(949) 752-8525 Telephone
(949) 955-2415 Telefax

PROOF OF SERVICE

I am a resident of the state of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is 17961 Sky Park Circle, Suite 38-E, Irvine, California 92614. On March 15, 2012, I served the following document(s) in the manner indicated:

1. **PLAINTIFF'S/COUNTER- DEFENDANT GLIDEWELL
LABORATORIES ANSWER TO COUNTERCLAIMS OF
DEFENDANT/COUNTER- PLAINTIFF KEATING**

- ☒ via electronic means by the Court's electronic filing system CM/ECF.
- ☐ by placing the document(s) listed above in a sealed envelope to the person at the address set forth below by postage prepaid United States First Class United States mail on the same date set out below.

J. Mark Holland
J. Mark Holland & Associates
3 San Joaquin Plaza, Suite 210
Newport Beach, CA 92660

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed March 15, 2012 at Irvine, California.

By: /s/ Jodie Miller

Jodie Miller

Case No.: SACV11-01309-DOC(ANx)
CERTIFICATE OF SERVICE